

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BOBBY MORRIS, individually and on behalf
of all others similarly situated,

Plaintiff

v.

No. 4:25-cv-00020
District Judge Matthew T. Schelp

ACME ELECTRIC MOTOR, INC., D/B/A
ACME TOOLS,

Defendant.

DECLARATION OF DEAN SPICER

Pursuant to 28 U.S.C. § 1746, Dean Spicer declares under the penalty of perjury as follows:

1. I am a resident of the State of North Dakota and above the age of 18.
2. I have been employed by Acme Electric Motor, Inc., d/b/a Acme Tools ("Acme"), since 1991 and am currently the Chief Technology Officer. I am familiar with Acme's text message advertisements, promotions, and campaigns. In my role, I have access to data involving text messages sent on Acme's behalf to its customers.
3. I am authorized to execute this Declaration on behalf of Acme in support of its Motion to Stay Pending Arbitration Pursuant to FAA Section 3.
4. The facts set forth below are true and correct, based on my personal knowledge, and based on my review of business records made and kept in the regular course of business by persons whose regular job function it is to make and keep such records. If called as a witness, I would truthfully testify to these facts.

5. Records maintained by Acme and its vendor, Attentive Mobile, Inc., in the ordinary course of business show that plaintiff Bobby Morris opted in to receive text messages from Acme on November 26, 2022. Attached as **Exhibit 1** is a true and correct copy of an Audit Letter from Acme's marketing message vendor, Attentive, Inc., regarding the web flow sequence and enrollment for Plaintiff's phone number (636-699-0403) ("Audit Letter").

6. As described in the Audit Letter, on November 26, 2022, a user with the phone (636-699-0403) visited <https://www.acmetools.com/> and signed up to receive text messages from Acme at the following URL:

https://www.acmetools.com/42in-industrial-mobile-work-station-11-drawers-83169/099575831690.html?irclickid=U9-QR-3awxyNW5rxXATPFUOtUkA0p4WJy1GnRQ0&irgwc=1&utm_campaign=Slickdeals-Staff&utm_channel=Affiliates&utm_source=impact&utm_medium=affiliate

7. At 19:57:37 (UTC) the user with the phone (636-699-0403) was shown a promotion on Acme's text messaging marketing and promotional program:



The image is a screenshot of a promotional form from Acme Tools. At the top, the Acme Tools logo is displayed. Below it, the text "ENTER TO WIN" is followed by "\$599" in large, bold letters, and "GIFT CARD" below that. A red box contains the following text: "By submitting this form, you agree to receive recurring automated promotional and personalized marketing text messages (e.g. cart reminders) from Acme Tools at the cell number used when signing up. Consent is not a condition of any purchase. Reply HELP for help and STOP to cancel. Msg frequency varies. Msg and data rates may apply. View [Terms, Privacy & Giveaway Terms](#)." Below this is a white input field labeled "Mobile Number". At the bottom, a white button reads "ENTER TO WIN NOW" with the subtext "when you sign up for email and texts" below it. A close button (X) is in the top right corner.

8. The user then entered the mobile phone number (636-699-0403) and clicked on the “ENTER TO WIN NOW when you sign up for email and texts” button on at 19:57:47 (UTC) to sign up to receive text messages from Acme Tools.

9. To confirm the sign-up, Acme Tools responded with the following message on 2022-11-26 at 19:57:49 (UTC) from the Acme Tools short code (76830):

Acme Tools: Reply Y to subscribe to recurring automated personalized marketing alerts (e.g. cart reminders) from Acme Tools.

10. On 2022-11-26 at 19:58:02 (UTC), the user confirmed his sign-up for the Acme Tools SMS program by sending a “Y” text to the Acme Tools short code (76830).

11. Acme Tools responded with the following messages to the user on 2022-11-26 19:58:06 (UTC) and 19:58:11 (UTC) from the Acme Tools short code (76830), respectively:

Acme Tools: Welcome to Acme Tools! Msg & data rates may apply. Msg frequency varies. Reply HELP for help, STOP to cancel. Privacy: attnl.tv/p/SF8

Acme Tools: Thanks for subscribing! You've been entered to win a \$599 gift card! Start shopping today: <https://acmetools.attnl.tv/l/soq/5JXyq>.

12. As indicated in the promotion image above, before Plaintiff signed up to receive text messages, he was shown the following language:

By signing up via text, you agree to receive recurring automated promotional and personalized marketing text messages (e.g., cart reminders) from Acme Tools at the cell number used when signing up. Consent is not a condition of any purchase. Reply HELP for help and STOP to cancel. Msg frequency varies! Msg and data rates may apply. View Terms & Privacy.

13. The “Terms” hyperlink directs users to the Acme Tools Messaging Terms & Conditions (“Messaging Terms”) at following web address <https://attnl.tv/t/SF8>. Attached hereto as **Exhibit 2** is a true and correct copy of the Messaging Terms that were accessible to Plaintiff via hyperlink.

14. The Messaging Terms contain a provision titled “Dispute Resolution,” which provides, in relevant part: “In the interest of resolving disputes between you and Acme Tools in the most expedient and cost effective manner, you and Acme Tools agree that any dispute arising out of or in any way related to these messaging terms and conditions (‘Messaging Terms’) or your receipt of text messages from Acme Tools or its service providers will be resolved by binding arbitration.”

15. The Messaging Terms further state that “the arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.”

16. The Messaging Terms also contain the following notice in all capitals: “BY AGREEING TO THESE MESSAGING TERMS, YOU AND ACME TOOLS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AND THAT THESE MESSAGING TERMS SHALL BE SUBJECT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT.”

17. Since the Plaintiff joined the Acme Tools SMS program on November 26, 2022, the Acme Tools short code (76830) has never received a “STOP” message from the Plaintiff, and the Plaintiff never otherwise contacted Acme or Attentive to withdraw his express consent to receive text messages from Acme Tools.

18. Between November 26, 2022, and December 30, 2024, Acme’s vendor, Attentive, continued to send text message promotional messages periodically and continuously to Plaintiff at phone number (636-699-0403).

19. Plaintiff's phone number ending in 0403 was manually opted out by Acme of Acme's SMS program on December 30, 2024. Acme's short code (76830) number has received no additional messages after the opt out.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of February, 2025 in Fargo, North Dakota.



Dean Spicer, Chief Technology Officer

EXHIBIT 1

To Whom It May Concern,

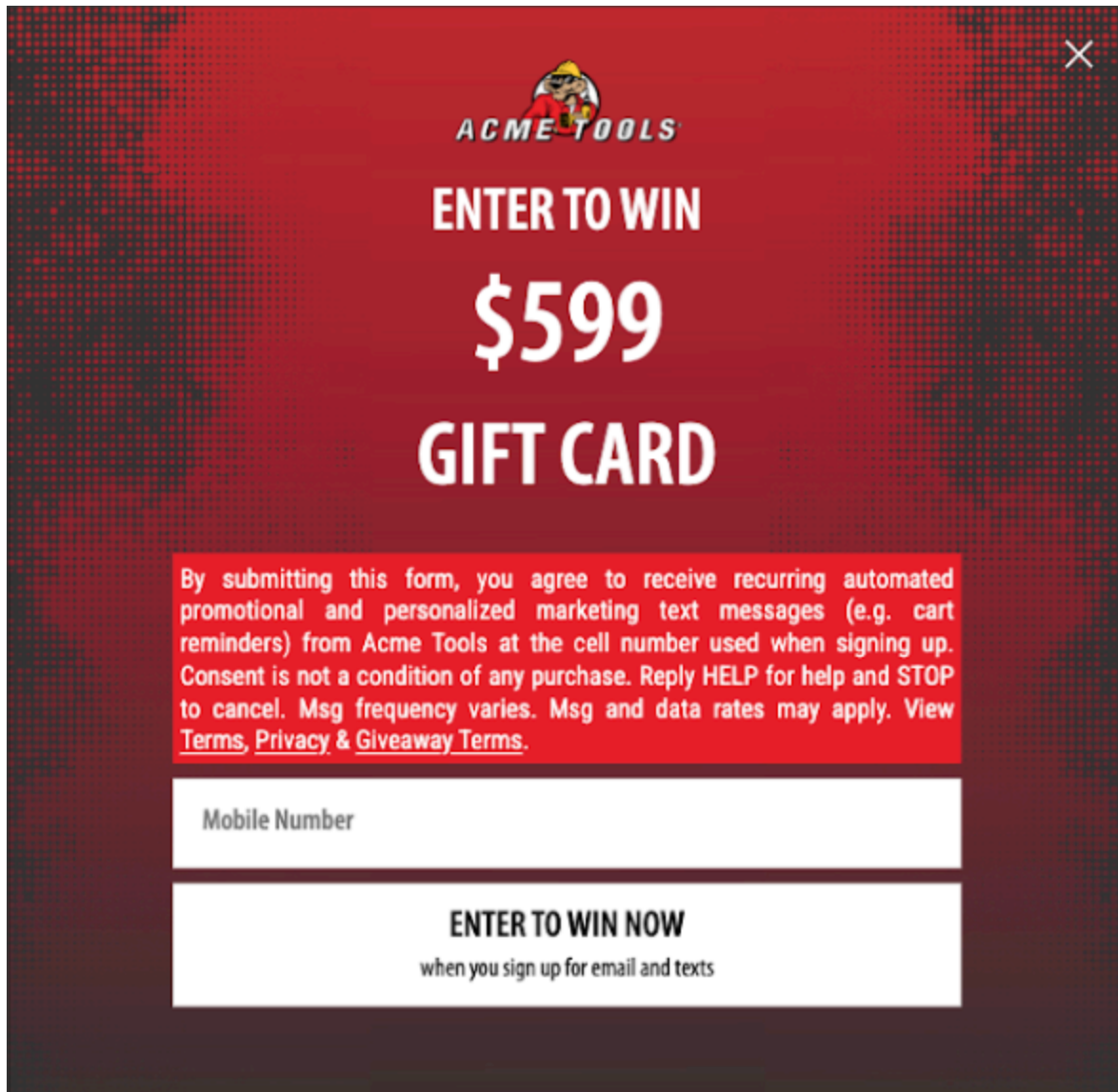
The CTIA Short Code Registry confirms that the short code used by Acme Electric Motor Inc. (d/b/a Acme Tools) to send and receive messages via the Attentive Platform is 76830:

	Short Code↑↓	Expiration Date↑↓	Status↑↓	Term↑↓
—	76830	2/25/2026	Approved	Billed Monthly
<div> <div> Start Date: 2/25/2025 End Date: 2/25/2026 Short Code Type: Random Application Type: Renew Previous Order: 3303410 </div> <div> CSC Registrant Name: Andrew Adams Billing Contact Name: Melissa Brown Brand Client(s): Acme Electric Motor Inc Content Provider: Attentive Mobile Inc Direct Connection Aggregator: OpenMarket Application Service Provider: AttentiveMobile </div> </div>				

For the phone number in question (636-699-0403), we can confirm the user visited <https://www.acmetools.com/> and signed up to receive text messages from Acme Tools at the following URL:

https://www.acmetools.com/42in-industrial-mobile-work-station-11-drawers-83169/099575831690.html?irclickid=U9-QR-3awxyNW5rxXATPFUOtUkA0p4WJy1GnRQ0&irgwc=1&utm_campaign=Slickdeals-Staff&utm_channel=Affiliates&utm_source=impact&utm_medium=affiliate

On 2022-11-26 at 19:57:37 (UTC), the user was shown a promotion advertising the company's SMS program:



The image shows a promotional banner for Acme Tools. At the top center is the Acme Tools logo, which features a cartoon character wearing a hard hat and a red shirt, holding a wrench. Below the logo, the text "ENTER TO WIN" is displayed in white, followed by "\$599" in a large, bold white font, and "GIFT CARD" in white. Below this text is a red rectangular box containing white text that reads: "By submitting this form, you agree to receive recurring automated promotional and personalized marketing text messages (e.g. cart reminders) from Acme Tools at the cell number used when signing up. Consent is not a condition of any purchase. Reply HELP for help and STOP to cancel. Msg frequency varies. Msg and data rates may apply. View [Terms, Privacy & Giveaway Terms](#)." Below the red box is a white rectangular input field with the placeholder text "Mobile Number". At the bottom of the banner is a white rectangular button with the text "ENTER TO WIN NOW" in bold, and "when you sign up for email and texts" in a smaller font below it. A small white "X" icon is located in the top right corner of the banner.

The user manually entered the phone number (636-699-0403) and clicked on the “ENTER TO WIN NOW when you sign up for email and texts” button on 2022-11-26 at 19:57:47 (UTC) to sign up to receive text messages from Acme Tools. To confirm the sign up, Acme Tools responded with the following message on 2022-11-26 at 19:57:49 (UTC) from the Acme Tools short code (76830):

Acme Tools: Reply Y to subscribe to recurring automated personalized marketing alerts (e.g. cart reminders) from Acme Tools.

On 2022-11-26 at 19:58:02 (UTC), the user confirmed their sign up for the Acme Tools SMS program by sending a “Y” text to the Acme Tools short code (76830).

Acme Tools responded with the following messages to the user on 2022-11-26 19:58:06 (UTC) and 19:58:11 (UTC) from the Acme Tools short code (76830), respectively:

Acme Tools: Welcome to Acme Tools! Msg & data rates may apply. Msg frequency varies. Reply HELP for help, STOP to cancel. Privacy: attnl.tv/p/SF8

Acme Tools: Thanks for subscribing! You've been entered to win a \$599 gift card! Start shopping today: <https://acmetools.attn.tv/l/soq/5JXyq> .

Since the user joined the Acme Tools SMS program on 2022-11-26, the Acme Tools short code (76830) has never received a "STOP" message from the user of phone number in question (636-699-0403), and the user never otherwise contacted Attentive to withdraw their express consent to receive text messages from Acme Tools.

The phone number (636-699-0403) was opted out on 2024-12-30. The phone number received no messages from Acme Tools through the Attentive platform after the opt out.

Sincerely,

Andrew Sega

Andrew Sega
Senior Director, Engineering
Attentive Mobile Inc.



EXHIBIT 2

Acme Tools Messaging Terms & Conditions

You agree to receive recurring automated promotional and personalized marketing text (e.g., SMS and MMS) messages (e.g. cart reminders) from Acme Tools, including text messages that may be sent using an automatic telephone dialing system, to the mobile telephone number you provided when signing up or any other number that you designate. Consent to receive automated marketing text messages is not a condition of any purchase. Msg & Data rates may apply.

Message frequency will vary. Acme Tools reserves the right to alter the frequency of messages sent at any time, so as to increase or decrease the total number of sent messages. Acme Tools also reserves the right to change the short code or phone number from which messages are sent and we will notify you when we do so.

Not all mobile devices or handsets may be supported and our messages may not be deliverable in all areas. Acme Tools, its service providers and the mobile carriers supported by the program are not liable for delayed or undelivered messages.

You also agree to our [Acme Tools Terms of Use](#) and [Acme Tools Privacy Policy](#).

We are able to deliver messages to the following mobile phone carriers: Major carriers: AT&T, Verizon Wireless, Sprint, T-Mobile, MetroPCS, U.S. Cellular, Alltel, Boost Mobile, Nextel, and Virgin Mobile. Minor carriers: Alaska Communications Systems (ACS), Appalachian Wireless (EKN), Bluegrass Cellular, Cellular One of East Central IL (ECIT), Cellular One of Northeast Pennsylvania, Cincinnati Bell Wireless, Cricket, Coral Wireless (Mobi PCS), COX, Cross, Element Mobile (Flat Wireless), Epic Touch (Elkhart Telephone), GCI, Golden State, Hawkeye (Chat Mobility), Hawkeye (NW Missouri), Illinois Valley Cellular, Inland Cellular, iWireless (Iowa Wireless), Keystone Wireless (Immix Wireless/PC Man), Mosaic (Consolidated or CTC Telecom), Nex-Tech Wireless, Ntelos, Panhandle Communications, Pioneer, Plateau (Texas RSA 3 Ltd), Revol, RINA, Symmetry (TMP Corporation), Thumb Cellular, Union Wireless, United Wireless, Viaero Wireless, and West Central (WCC or 5 Star Wireless).

Cancellation

Text the keyword STOP, END, CANCEL, UNSUBSCRIBE or QUIT to our shortcode to cancel. After texting STOP, END, CANCEL, UNSUBSCRIBE or QUIT to our shortcode you will receive one additional message confirming that your request has been processed. You acknowledge that our text message platform may not recognize and respond to unsubscribe requests that do not include the STOP, END, CANCEL, UNSUBSCRIBE or QUIT keyword commands and agree that Acme Tools and its service providers will have no liability for failing to honor such requests. If you unsubscribe from one of our text message programs, you may continue to receive text messages from Acme Tools through any other programs you have joined until you separately unsubscribe from those programs.

Help

Text the keyword HELP to our shortcode to return customer care contact information.

Customer Care

If you are experiencing any problems, please visit <https://support.attentivemobile.com/help/> and submit the form with details about your problem or your request for support, or email support@attentivemobile.com.

Contact

This message program is a service of Acme Tools, located at 1101 N Washington St, Grand Forks, North Dakota 58203.

Dispute Resolution

- a. General. In the interest of resolving disputes between you and Acme Tools in the most expedient and cost effective manner, you and Acme Tools agree that any dispute arising out of or in any way related to these messaging terms and conditions ("Messaging Terms") or your receipt of text messages from Acme Tools or its service providers will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or in any way related to these Messaging Terms, or your receipt of text messages from Acme Tools or its service providers whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless

of when a claim arises. YOU UNDERSTAND AND AGREE THAT, BY AGREEING TO THESE MESSAGING TERMS, YOU AND Acme Tools ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION AND THAT THESE MESSAGING TERMS SHALL BE SUBJECT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT.

- b. Exceptions. Notwithstanding subsection (a) above, nothing in these Messaging Terms will be deemed to waive, preclude, or otherwise limit the right of you or Acme Tools to: (i) bring an individual action in small claims court; (ii) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (iii) seek injunctive relief in aid of arbitration from a court of competent jurisdiction; or (iv) file suit in a court of law to address an intellectual property infringement claim.
- c. Arbitrator. Any arbitration between you and Acme Tools will be governed by the Federal Arbitration Act and the Commercial Dispute Resolution Procedures and Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Messaging Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Acme Tools. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- d. Notice; Process. If you or Acme Tools intends to seek arbitration, then the party seeking arbitration must first send a written notice of the dispute to the other party by U.S. Mail ("Notice"). Acme Tools address for Notice is: 1101 N Washington St, Grand Forks, North Dakota 58203, Attn: Chief Executive Officer. The Notice must: (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). You and Acme Tools will make good faith efforts to resolve the claim directly, but if you and Acme Tools do not reach an agreement to do so within 30 days after the Notice is received, you or Acme Tools may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Acme Tools must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any.
- (e) Fees. If you commence arbitration in accordance with these Messaging Terms, Acme Tools will reimburse you for your payment of the filing fee, unless your claim is for more than \$15,000 or as set forth below, in which case the payment of any fees will be decided by the AAA Rules. If the claim is for \$15,000 or less, you may choose whether the arbitration will be conducted: (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephone hearing; or (iii) by an in-person hearing as established by the AAA Rules. If the arbitrator finds that either the substance of

your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Acme Tools for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. You and Acme Tools agree that such written decision, and information exchanged during arbitration, will be kept confidential except to the extent necessary to enforce or permit limited judicial review of the award. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from you or Acme Tools made within 14 days of the arbitrator's ruling on the merits.

- e. No Class Actions. YOU AND Acme Tools AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Acme Tools agree otherwise in a signed writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- f. Modifications to this Arbitration Provision. Notwithstanding anything to the contrary in these Messaging Terms, if Acme Tools makes any future change to this arbitration provision, other than a change to Acme Tools address for Notice, you may reject the change by sending us written notice within 30 days of the change to Acme Tools address for Notice, in which case this arbitration provision, as in effect immediately prior to the changes you rejected, will continue to govern any disputes between you and Acme Tools.
- g. Enforceability. If an arbitrator decides that applicable law precludes enforcement of any of the limitations of subsection (f) above (addressing class, representative and consolidated proceedings) as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and brought in court. If any other provision of these Messaging Terms is found to be unenforceable, the applicable provision shall be deemed stricken and the remainder of these Messaging Terms shall remain in full force and effect.